

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FARRELL "LARRY" RUPE

Claimant

VS.

STATE OF KANSAS

Respondent

Self-Insured

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Docket No. 219,225

ORDER

Respondent requested review of the preliminary hearing Order dated March 26, 1997, entered by Administrative Law Judge Steven J. Howard.

ISSUES

The Administrative Law Judge awarded claimant medical benefits. Respondent requested the Appeals Board to review the issue of whether claimant provided respondent with timely notice of accident as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

The parties agreed claimant injured his back on August 15, 1996, while working for the respondent. Claimant did not report his accident to respondent until mid to late September 1996 after he learned the results of an MRI which indicated he had a herniated lumbar disc.

Respondent denied claimant provided notice of accident within ten days of its occurrence and also denied claimant had "just cause" for failing to report the accident within the required ten-day period.

This case is governed by K.S.A. 44-520 which provides as follows:

"Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident"

Although he was not aware he had sustained injury at the time, claimant now believes he injured his low back on August 15, 1996, while pushing a load of wet cement over rough terrain. Claimant did not begin to experience symptoms until later in the day and was not sure at that time if he had sustained injury. The next day claimant began to experience pain in his leg and consulted his personal physician. When the doctor asked for possible causes of claimant's complaints, claimant responded that he might have done something at work the day before but he was not sure.

Within a week of August 15, 1996, claimant spoke with one of his supervisors, Margaret Douglas, about his back hurting when she asked why he was limping. However, claimant did not tell her he had injured his back at work because he "didn't know what the problem was."

Claimant also testified he was not aware he had only ten days to report a work-related accident to the respondent. The Appeals Board finds that testimony credible.

The Appeals Board finds claimant did not report the August 15, 1996, accident within ten days of its occurrence as required by K.S.A. 44-520. However, when considering all of the facts including how and when the symptoms arose, claimant's inability to relate the symptoms to work activities, and claimant's lack of knowledge of the ten-day reporting requirement, for preliminary hearing purposes the Appeals Board finds claimant had just cause for failing to report the accident within ten days of its occurrence. Therefore, the notice given in September 1996 was timely as it was within 75 days of the accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated March 26, 1997, entered by Administrative Law Judge Steven J. Howard should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: Bruce A. Brumley, Topeka, KS
Lisa J. Lewis, Topeka, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director